

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

MAR 13 2008

COURT OF APPEALS  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2007-0291-PR
	)	DEPARTMENT B
v.	)	
	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
JOHN LUKE DOITCH,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-20052518 and CR-20054805 (Consolidated)

Honorable Nanette M. Warner, Judge

REVIEW DENIED

John Doitch

In Propria Persona  
Tucson

E C K E R S T R O M, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner John Doitch was convicted in 2005 of theft by misrepresentation of property or services with a value of more than \$250 and less than \$1,000. The trial court suspended the imposition of sentence and placed Doitch on three years' probation. In January 2006, Doitch plead guilty in another cause to forgery, a class four felony. That offense was the basis for a petition to revoke probation, which was

consolidated with the new charge, and at the same change-of-plea proceeding, Doitch admitted he had violated probation by committing forgery. At the combined disposition and sentencing hearing, the trial court designated the previously undesignated theft offense a class six felony, revoked probation, and sentenced Doitch to prison for one year, with ninety-five days' credit for presentence incarceration. The court also sentenced Doitch to a concurrent, aggravated, three-year prison term on the forgery conviction. In this petition for review, Doitch appears to be challenging an order the trial court entered after it dismissed the post-conviction proceeding, commenced pursuant to Rule 32, Ariz. R. Crim. P.

¶2 Doitch filed a notice of post-conviction relief, and appointed counsel thereafter filed a notice that she found no meritorious claims to raise in the two causes that had been consolidated. In its November 16, 2006, order, the trial court granted Doitch until January 16, 2007, to file a pro se petition. He neither filed a petition nor sought more time in which to file one. Consequently, on January 22, 2007, the court summarily dismissed the post-conviction proceeding. Thereafter, Doitch sought an order in the post-conviction proceeding requiring that he be provided with a copy of the record in the consolidated causes. In its June 12, 2007, minute entry, which was apparently the court's response to the request for the record, the trial court first noted that its January 2007 order "[ha]d not reach[ed] the defendant," thus the court would enclose a copy of that order. Then, the court reviewed the procedural history of the case, as we have above. The court added: "There is no indication that the defendant did not receive the order of the court dated November 16,

2006 granting the defendant until January 16, 2007 to file a *pro se* petition.” The court then noted that Doitch’s Rule 32 counsel, Joy Athena, had all of the records in the case and ordered Athena to “provide the relevant pleadings and documents from the defendant’s court proceedings to the defendant for any further use in his case.”

¶3 In his petition for review, Doitch seeks post-conviction relief based on claims that have yet to be presented to the trial court. We will not consider such claims first on a petition for review. *See generally* Ariz. R. Crim. P. 32.9(c). Whether it is by seeking reinstatement of the previously dismissed post-conviction proceeding or commencing a new proceeding, the claims Doitch is attempting to raise must be presented to the trial court. Because there is nothing for this court to review, we deny the petition for review.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge